

AMENDED IN SENATE JANUARY 20, 2010

AMENDED IN SENATE JANUARY 5, 2010

AMENDED IN SENATE DECEMBER 17, 2009

AMENDED IN SENATE MARCH 31, 2009

**SENATE BILL**

**No. 732**

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**Introduced by Senator Alquist**

February 27, 2009

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An act to amend Section 1324.23 of the Health and Safety Code, ~~and to amend Section 14126.027 of the Welfare and Institutions Code,~~ relating to Medi-Cal, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 732, as amended, Alquist. Medi-Cal: skilled nursing facilities: quality assurance fees.

Existing law provides for the licensure and regulation by the State Department of Public Health of long-term health care facilities, including skilled nursing facilities. Existing law requires the department to impose a uniform quality assurance fee on each skilled nursing facility, with certain exceptions, in accordance with a prescribed formula. The formula is based on the determination of the projected net revenues of skilled nursing facilities. The fee will cease to be assessed and collected on and after July 31, 2011.

Existing law provides for the Medi-Cal program, administered by the State Department of Health Care Services, under which health care services, including nursing facility services, are provided to qualified low-income persons. ~~Existing law prescribes procedures for Medi-Cal reimbursement at these facilities.~~

~~Existing law, the Medi-Cal Long-Term Care Reimbursement Act, requires the department, subject to federal approval and the availability of federal funds, to implement a facility-specific reimbursement ratesetting system for certain freestanding skilled nursing facilities. Reimbursement rates for these facilities are funded by a combination of federal funds and moneys collected pursuant to the above-described uniform quality assurance fee. Existing law provides that this rate methodology shall cease to be implemented on July 31, 2011, with these provisions to be repealed on January 1, 2012.~~

Existing law authorizes the director to adopt regulations as are necessary to implement the above-described ~~provisions~~ *quality assurance fee*. Existing law authorizes the director, as an alternative to adopting regulations, to implement the above-described provisions, in whole or in part, by means of a provider bulletin, or other similar instructions, without taking regulatory action, provided that neither the bulletin nor the other similar instructions remain in effect after July 31, 2010.

~~This bill would, instead, prohibit the provider bulletins or other similar instructions from remaining in effect after July 31, 2011.~~

*This bill would permit provider bulletins or similar instructions related to exemptions from the quality assurance fee for continuing care retirement communities or multilevel retirement facilities, issued prior to July 31, 2010, to remain in effect after July 31, 2010. It would also authorize the director to issue new provider bulletins or similar instructions, after July 31, 2010, related to exemptions from the quality assurance fee for continuing care retirement communities or multilevel retirement facilities.*

This bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 1324.23 of the Health and Safety Code
- 2 is amended to read:
- 3 1324.23. (a) The Director of Health Care Services, or his or
- 4 her designee, shall administer this article.
- 5 (b) The director may adopt regulations as are necessary to
- 6 implement this article. These regulations may be adopted as

emergency regulations in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). For purposes of this article, the adoption of regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare. The regulations shall include, but need not be limited to, any regulations necessary for any of the following purposes:

(1) The administration of this article, including the proper imposition and collection of the quality assurance fee not to exceed amounts reasonably necessary for purposes of this article.

(2) The development of any forms necessary to obtain required information from facilities subject to the quality assurance fee.

(3) To provide details, definitions, formulas, and other requirements.

(c) (1) As an alternative to subdivision (b), and notwithstanding the rulemaking provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the director may implement this article, in whole or in part, by means of a provider bulletin, or other similar instructions, without taking regulatory action, provided that no such bulletin or other similar instructions shall remain in effect after July 31, 2011, 2010, *except as provided in paragraph (2).*~~It~~

(2) *As an alternative to the adoption of regulations pursuant to subdivision (b), and notwithstanding the rulemaking provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code:*

(A) *Provider bulletins or similar instructions related to exemptions from the quality assurance fee for continuing care retirement communities or multilevel retirement facilities, issued prior to July 31, 2010, may remain in effect after July 31, 2010.*

(B) *The director may, after July 31, 2010, issue new provider bulletins or similar instructions related to exemptions from the quality assurance fee for continuing care retirement communities or multilevel retirement facilities.*

(3) *It is the intent of the Legislature that the regulations adopted pursuant to subdivision (b) shall be adopted on or before July 31, 2011 2010.*

1     ~~SEC. 2. Section 14126.027 of the Welfare and Institutions~~  
2     ~~Code is amended to read:~~

3     ~~14126.027. (a) (1) The Director of Health Care Services, or~~  
4     ~~his or her designee, shall administer this article.~~

5     ~~(2) The regulations and other similar instructions adopted~~  
6     ~~pursuant to this article shall be developed in consultation with~~  
7     ~~representatives of the long-term care industry, organized labor,~~  
8     ~~seniors, and consumers.~~

9     ~~(b) (1) The director may adopt regulations as are necessary to~~  
10    ~~implement this article. The adoption, amendment, repeal, or~~  
11    ~~readoption of a regulation authorized by this section is deemed to~~  
12    ~~be necessary for the immediate preservation of the public peace,~~  
13    ~~health and safety, or general welfare, for purposes of Sections~~  
14    ~~11346.1 and 11349.6 of the Government Code, and the department~~  
15    ~~is hereby exempted from the requirement that it describe specific~~  
16    ~~facts showing the need for immediate action.~~

17    ~~(2) The regulations adopted pursuant to this section may include,~~  
18    ~~but need not be limited to, any regulations necessary for any of~~  
19    ~~the following purposes:~~

20    ~~(A) The administration of this article, including the specific~~  
21    ~~analytical process for the proper determination of long-term care~~  
22    ~~rates.~~

23    ~~(B) The development of any forms necessary to obtain required~~  
24    ~~cost data and other information from facilities subject to the~~  
25    ~~ratesetting methodology.~~

26    ~~(C) To provide details, definitions, formulas, and other~~  
27    ~~requirements.~~

28    ~~(e) As an alternative to the adoption of regulations pursuant to~~  
29    ~~subdivision (b), and notwithstanding Chapter 3.5 (commencing~~  
30    ~~with Section 11340) of Part 1 of Division 3 of Title 2 of the~~  
31    ~~Government Code, the director may implement this article, in~~  
32    ~~whole or in part, by means of a provider bulletin or other similar~~  
33    ~~instructions, without taking regulatory action, provided that no~~  
34    ~~such bulletin or other similar instructions shall remain in effect~~  
35    ~~after July 31, 2011. It is the intent that regulations adopted pursuant~~  
36    ~~to subdivision (b) shall be in place on or before July 31, 2011.~~

37    ~~SEC. 3.~~

38    ~~SEC. 2. This act is an urgency statute necessary for the~~  
39    ~~immediate preservation of the public peace, health, or safety within~~

1 the meaning of Article IV of the Constitution and shall go into  
2 immediate effect. The facts constituting the necessity are:  
3 In order to make the necessary statutory changes to authorize  
4 ~~the State Department of Health Care Services~~ the continued and  
5 uninterrupted use of provider bulletins ~~for one additional fiscal~~  
6 ~~year~~ *or similar instructions by the State Department of Health*  
7 *Care Services related to exemptions from the quality assurance*  
8 *fee*, it is necessary ~~for that~~ this act take effect immediately.

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